IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1978 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAVINCHANDRA SHETH SINCE DEC.THRO HIS LEGAL HEIRS & REP.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1978 of 1991

MR MD RANA for Petitioner No. 1-1/7

MR SHANTILAL S SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 17/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Evidently, in a very peculiar and special circumstances, we are called upon to determine and adjudicate upon the controversy with regard to quantum of punishment imposed by the disciplinary authority against the deceased petitioner and culminated into the decision of Single Bench of this Court, dated 16.2.01. Thereafter, Civil Application No.821 of 2002 came to be preferred in this petition and the same Bench allowed the application making rule absolute by granting amendment in the petition and the resultant impleadment of the heirs of the original petitioner, who, passed away during the pendency of the petition on 26.10.94, as manifested from the order of the single Bench dated 27.2.2002. Since the petition came to be disposed of by the single Bench on 16.2.2001, 'per-incuriam', the demise of the original petitioner, as the heirs had not informed the advocate for the petitioner, and, therefore, the petitioner's advocate could not mention the factum of death of the original-petitioner at the time of disposal of the petition on merits on 16.2.2001. The order on merits, obviously was, therefore, passed in favour of a dead person as the original petitioner had died on 26.10.94 and no heirs were sought to be impleaded in place of the original petitioner before it came to be disposed of on merits. This aspect was brought to the notice of the single Bench by filing the aforesaid Civil Application which, eventually, came to be allowed holding that technical abatement of the original petition shall stand quashed and permitting the legal representatives of the deceased original-petitioner to be substituted for the deceased and directing for necessary resultant amendment in the main petition.

Therefore, in view of the allocation of business in exercise of the prerogative of the Hon'ble Chief Justice, hitherto single Bench entertainable petitions against the Central Government in case of service issues have been directed to be placed before the Division Bench. That is how this matter has come up before us for our consideration and adjudication.

Learned advocate Mr.Rana appeared for heirs of the original petitioner, whereas, none appeared for and on behalf of the respondent though repeatedly called out in both the sessions.

After having taken into account the factual profile, the situational reality and the unusual and uncommon facts, we are reminded of a very well propounded and avowedly explored and declared legal position that the ultimate anxiety of the Court, more so, while exercising

Constitutional remedial powers is to see that justice is done as law and justice is done as law and justice should never be a distant neighbours. It is in this context though in precise phraseological use the decision of the single Bench dated 16.2.2001 does not seem to have been recalled or quashed by subsequent order dated 27.2.02 in Civil Application, but the essence and substance of the second order is to revive the petition filed by the original petitioner, which came to be disposed of on merits, unfortunately, without any knowledge about the factum of demise of the original petitioner, long before it came to be decided on merits. After bearing in mind the text and context, the design and desideratum of the second order in the Civil Application, recorded by the single Bench, we are convinced and satisfied that it is reviving the original petition filed by the original petitioner setting aside or recalling the earlier order passed in the main petition, whereby, the petition came to be partly allowed in favour of the original deceased petitioner. Therefore, on this count, it would be, obviously, necessary for us to consider and adjudicate upon the merits of the main petition. Secondly, the technical abatement of the petition is also set aside in the subsequent order. Thirdly, indubitably, the first order in the main petition recorded by the learned single Judge on 16.2.2001 was passed in favour of the original petitioner who had passed away, as early as on 26.10.94, the factum of which was not brought to the notice of the Court as well as the concerned advocate of the petitioners by the heirs. Obviously, therefore, the first order in the main petition was in favour of the deceased. Needless to reiterate that any order for or against a dead person would be a nullity. Therefore, on all the aforesaid three counts, it is not only expedient, but also incumbent upon us to decide the merits of the main petition, as if there was no any order on merits. That is the reason why, we proceed to consider and determine the merits of the main petition, hereinafter.

The original petitioner was working as Constable in the Railway Protection Force who had put in more than 25 years of service at the relevant point of time. The Disciplinary Authority by its order dated 21/22.2.86, removed the petitioner from the service after holding departmental inquiry on the ground of absence without any leave application or report for a period of eight days. The delinquency which was established in a domestic Tribunal, unsucessfully was carried into a departmental appeal, which led to filing of petition invoking the provisions Article 226 of the Constitution of India, questioning the order of removal.

The following aspects are no longer in controversy which have material bearing and relevancy on the merits of the petition and therefore, we deem it expedient to highlight hereasunder:

1. Deceased, original-petitioner was working as a security person in the Railway Protection Force.

2. He was departmentally charged under Rule 44 of the RPF Rules 1959 by the Commandant, for the following charges.

(i) Remained absent in an unauthorised manner from duty from 15.3.86 to 19.3.85 i.e. 5 days.

(ii) Absented from duty of RVC cash guard at about 1.15 hours on 31.3.85 without any authority or permission. He came back at about 3.50 hrs. and thrown away the key of the strong room towards his co-worker Constable Prabhakar and went away and remained absent from 31.3.85 noon 2.4.85 i.e. 3 days unauthorisedly.

Consequent upon the said charges, plea was recorded and deceased confessed the charges and delinquency without any demur or any explanation on record for his absence from a responsible security duty and, more so when he was in-charge as guard of cash.

3. Pursuant to the show cause notice and framing of the aforesaid charges, not only no contest was made, but the said charges and delinquency had been admitted.

4. The Disciplinary Authority, upon overall factual scenario and the nature of proof of charges and the type of duty of the original-petitioner, passed the impugned order of removal from service on 22.2.86 which is directly challenged in this petition.

5. He, unsuccessfully, carried the matter in appeal before the Appellate Authority. The Appellate Authority after having considered the entire evidence on record and finding the plea of guilty to the charges levelled against the original petitioner, delinquent, thought it fit not to

interfere with the quantum of punishment imposed by the Disciplinary, upon the report of the Inquiry Officer and plea of guilty.

6. The original petitioner, unfortunately, as ill-luck would have been, has already been punished by the Almighty, as he is no more on this Earth from 26.10.94 and the widow of the deceased and six other legal heirs and representatives, out of them five are daughters and one is son, upon an application before the the single Bench got the order in their favour of impleadment even after the decision.

After having taken into consideration the overall picture emerging from the record of the present case and the limited scope of the jurisdictional sweep of this Court under Article 226 of the Constitution of India and the nature and number of charges, the plea of guilty, the period of absence, the quality and type of duty on the part of deceased, original petitioner-delinquent and the latest proposition of law, ends of justice will be satisfied if the order of removal from service recorded by the Disciplinary and confirmed the appellate Authority is quashed and set aside without any backwages in the light of the peculiar facts and circumstances of the case. Therefore, the petition shall stand allowed to the aforesaid extent without any order as to costs. Rule is made absolute to the aforesaid extent.

We need not divulge upon the submission made by the learned advocate for the petitioners that the respondents be directed to pay the family pension to the widow of the deceased as the respondent authority is obliged to consider this aspect in terms of the length of the service and the entitlement. If widow is entitled to family pension in terms of the Service Rules and the length of service of the deceased the respondent authority shall determine and fix up the quantum of family pension if due and payable to the widow of the deceased, expeditiously.

(J.N.Bhatt, J.)

(Kundan Singh, J.)

(vjn)